IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA

VS. 4:07-CR-00086-02-JMM

MARCEL ROSHEL FENNELL

ORDER

Pending is Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582 (Doc. No. 848), based on the retroactive application of the crack cocaine penalty reduction imposed by the United States Sentencing Commission, effective November 1, 2011.

On April 8, 2008, Defendant pled guilty to Count 1 of the indictment, after stipulating, under a plea agreement, to a base offense level of 34 for conspiracy with intent to distribute between 15 and 50 kilograms of cocaine powder.[1] On July 16, 2008, Defendants was sentenced to 262 months in prison.[2] His sentence was reduced to 210 months on May 6, 2009.[3]

Although Count 1 alleged a conspiracy involving cocaine powder and cocaine base, at sentencing Defendant was held responsible only for cocaine powder. Since Amendment 750 applies only to sentences involving cocaine base and Defendant was sentenced based on cocaine powder only, he is not entitled to sentencing reduction under the Guideline Amendment.

Accordingly, Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582 (Doc. No. 848) is DENIED.

IT IS SO ORDERED this 31st day of October, 2011.

UNITED STATES DISTRICT JUDGE

---

[1]Doc. No. 450. He also agreed to a 2 point enhancement for possession of a firearm.

[2]Doc. No. 526.

[3]Doc. No. 690.